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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976.

No. 76-1872

WILLIAM WHITAKER,

Petitioner,

vs.

ROBERT BRUCE PIERCE, JOHN HILBORN, WILLIAM G. STRATTON, BIRGER DAHL, ROYAL SPEIDEL, and W. EDGAR OUTLAW, JR.,

Respondents.

IN CHANCERY COMPLAINT FOR INJUNCTION RESCISSION AND REDRESS OF CIVIL RIGHTS.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

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To: Honorable Warren E. Burger and Justices of the Supreme Court of the United States:

OPINION BELOW AND JURISDICTION.

The opinion below and jurisdiction are set forth in the Petition. The respondents deny, however, for reasons enumerated below, the applicability of the constitutional provisions which the petitioner seeks to invoke.

QUESTION PRESENTED FOR REVIEW.

1. Did the Illinois Appellate Court decision turn on a substantial Federal question, necessary for Supreme Court jurisdiction of this matter pursuant to Title 28 U. S. C. A. § 1257 et seq.

STATEMENT OF THE CASE.

The relevant facts and proceedings below are fully and fairly summarized in the opinion of the Illinois Court of Appeals, appended to the Petition.

REASON WHY THE WRIT SHOULD BE DENIED.

1. This Court lacks jurisdiction over this matter under Title 28 U. S. C. A. § 1257.

Title 28 U. S. C. A. § 1257 provides in pertinent part:

> "State Courts; Appeals; Certiorari:
>
> Final judgment or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows . . . (3) by writ of certiorari, where the validity of the state statute is drawn in question on the grounds of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, priviledge or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

Pursuant to Title 28 U. S. C. A. § 1257, this court has consistently held that it will not review a decision of a state court unless the record below demonstrates that the decision turned on a federal question, rather than on an independent, non-federal question. *Herb* v. *Pitcrairn*, 324 U. S. 117 (1945).

As stated by Mr. Justice Jackson in the *Herb* decision:

> "This Court from the time of its foundation has adhered to the principle that it will not review judgments of state

courts that rest on adequate and independent state grounds. Murdock v. Memphis, 20 Wall. (U.S.) 590, 636, 22 Led. 429, 444; Berea College v. Kentucky, 211 U.S. 45, 53, 53 Led. 81, 85, 29 S. CT. 33; Enterprise Irrigation District v. Farmers Mutual Canal Company, 243 U.S. 157, 164, 61 Led. 644, 648, 37 S. CT. 318; Fox Film Corporation v. Muller, 296 U.S. 207, 80 Led. 158 56 S. CT. 183. The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and Federal judicial systems and in the limitations of our own jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. . . ." (Pages 125 and 126 at 324 U. S.)

In the instant case, the decision of the Illinois Appellate Court, which upheld the trial court's denial of the petitioner's Motion for a Preliminary Injunction did not turn upon a federal question; but rather turned upon the issue of whether as a matter of law, the trial court had abused its discretion in denying the petitioner's Motion for a Preliminary Injunction which, under Illinois law, is determined by whether the party seeking the preliminary injunction establishes a likelihood of success on the merits.

Both the Illinois Appellate Court and the Illinois Supreme Court were confronted with the petitioner's assertions that the conduct of the respondents had violated his freedom of religion as guaranteed by the First and Fourteenth Amendments to the Constitution, and on that basis the trial court had erred in denying the petitioner's Motion for a Preliminary Injunction. However, the decision of the Illinois Appellate Court demonstrates that the Illinois Appellate Court expressly rejected the petitioner's arguments that it should review the matter on a constitutional basis and found that the sole question for review was the aforesaid non-federal question. In this regard the Court stated:

"We are cognizant of other issues raised by plaintiff, including his contention that he had a right not to have his

> employment terminated because of his religious conversion. We stress, however, that our sole role in review is to determine whether the trial court abused its discretion in denying plaintiff's request for preliminary injunction and, for the reasons stated above, we find no such abuse and we affirm the judgment of trial court." (Page A22 of Petition.)

Petitioner does not demonstrate that the Illinois Court's decisions turned on a federal question but merely states that the courts abdicated their duty in not protecting the petitioner's religious freedom which is inadequate to establish the jurisdiction of this Court.

In Summary this Court clearly lacks jurisdiction of this matter because the decision appealed from clearly turned upon whether the petitioner, at the trial court level sustained his burden in demonstrating a likelihood of success on the merits, and did not turn upon the resolution of any federal question.

CONCLUSION.

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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